



## **WORCESTERSHIRE COUNTY COUNCIL PLANNING ENFORCEMENT POLICY**

### **1.0 Introduction**

1.1 Worcestershire County Council (“the Council”) has responsibilities for mineral extraction as the Mineral Planning Authority, various waste management activities as the Waste Planning Authority and for the Council’s own development. The six District Councils within the County of Worcestershire are responsible for all other types of development control relating to planning matters.

1.2 At County level, development control involves the determination of applications for planning permission, the subsequent monitoring of approved developments to ensure compliance with the terms of the consent, investigating unauthorised development of the types for which the County Council is responsible and taking the appropriate action to enforce planning control.

1.3 A breach of planning control occurs when:-

- Development takes place without the relevant planning permission
- There has been a breach of condition on a planning permission.

However, such activities are not actually illegal, unless they take place in defiance of a formal Enforcement Notice. In these cases, criminal offences may be being committed and appropriate action will be taken.

1.4 On 21<sup>st</sup> June 2005, the Planning and Regulatory Committee agreed a “Protocol for Delegation of Decision Making” to the then Director of Environmental Services. This includes a provision for the Director or his officers to “take any necessary enforcement action in consultation with the Head of Legal Services” without the need to seek a formal committee resolution. However, Committee Members, and indeed, all elected Members have an important role to play in alerting the Director and his officers to any instances of potential breach of planning control drawn to their attention by local residents.

- 1.5 This policy has been published after consideration of planning policy advice and guidance provided by the Government (**see footnote 1**).

## **2.0 Purpose of Planning Enforcement**

- 2.1 To ensure that developments, for which the Council is the responsible planning authority, take place without causing serious or irremediable harm to the local amenities and/or the environment of Worcestershire.
- 2.2 Where development is not covered by planning permission, to take such action as is appropriate, to prevent/minimise any harm being caused, by bringing about cessation of works and/or appropriate remedial action.

## **3.0 Aims of the Policy**

- 3.1 The main aims of the policy are as follows:-
- To set out realistic, achievable objectives on planning enforcement
  - To define the range of options available to achieve our objectives
  - To provide a clear and accountable audit trail of our decision-making process
  - To adhere to and implement guidance in the Best Value Initiative (**see footnote 2**)
  - To adhere to and implement non-statutory advice from Government
- 3.2 Worcestershire County Council is a signatory to the Government's Enforcement Concordat (**see footnote 3**). This document commits the County Council to principles of good enforcement, standards of service promoting openness, consistency and proportionality and the provision of a fair and helpful planning enforcement service.

## **4.0 Investigating alleged breaches of Planning Control and subsequent action**

- 4.1 Complaints received by the Council regarding alleged breaches of planning control can be split into two broad categories; approximately 60% of complaints received in 2004 were about the unauthorised tipping of waste materials and 40% were about possible breaches of planning conditions where a permission has been granted for minerals or waste related developments.
- 4.2 The Council investigates reports of all alleged breaches of planning control whether they be reported by third parties or found as part of the Council's own monitoring procedures. The Council's Planning Enforcement Officer, supported by other relevant officers when required, carries out these investigations. All Council officers

undertaking investigations of any kind do so in a professional, accountable, fair and consistent manner.

4.3 All allegations of unauthorised development are thoroughly investigated with due regard to, principally, the Town and Country Planning Act 1990 (as amended) and relevant Government guidance. Many factors are researched before commencing formal enforcement, including:-

- The case specific facts unique to each investigation
- The amount of actual or potential harm resulting from or caused by the development
- The policies in the current Structure Plan and Local Plans and any other material considerations
- Full consideration of the prospect of success of different enforcement procedures

4.4 The Council can exercise discretion in relation to enforcement matters and may decide to take no formal action in cases where there is insignificant, or no, harm caused by a “technical” breach of a condition. In these instances, the time-consuming and costly legal procedures would not result in a clear benefit to the environment, local amenity or the public of Worcestershire and would not therefore be justified. In cases where the County’s powers overlap with those of other regulatory agencies it may be better for those other agencies to take action. For example, the Environment Agency may be better placed to deal with certain unauthorised waste disposal operations. Where there may be overlap between County and Districts, decisions on areas of jurisdiction will be made after consultation between those authorities.

## **5.0 Enforcement Procedures Available (Informal)**

5.1 Negotiation and persuasion are the ‘tools’ most often used in dealing with breaches. This not only saves time and resources but, more often than not, can achieve immediate cessation of any unauthorised development and/or remedial works to rectify any environmental damage. In some cases, breaches occur where a person is genuinely unaware that planning permission is required for works they are undertaking. Remedial works could involve regrading materials deposited on land or partial/complete removal of them. Where a breach has been satisfactorily resolved in this way then the Council will not usually initiate formal enforcement action, unless the breach persists or recurs.

5.2 Where an activity or development has taken place without planning permission the Council may request an application for retrospective

planning permission. However, this would normally only apply where it appears possible that the use or development might be acceptable.

## **6.0 Enforcement Procedures Available (Formal)**

6.1 Should negotiation and persuasion fail, then formal enforcement action may be initiated. There are a number of options available and the choice of procedures is carefully considered before commencing formal action. The course of action is properly planned, fully discussed and all possible outcomes are researched involving close and extensive liaison with our Legal Services section.

### **6.2 Planning Contravention Notice**

This Notice is used to obtain information from landowners/developers where it appears that a breach of planning control has taken place. Those on whom the Notice is served are required to explain/justify the development taking place on the land and so it can be effective in identifying unauthorised development and those responsible.

Failure to provide the information requested in this Notice within 21 days is an offence and on summary conviction could result in a fine, if the Council decides to pursue a prosecution.

### **6.3 Breach of Condition Notice**

Where there is a planning permission in force, and a condition of that permission is being breached, then a Breach of Condition Notice can be served on all interested parties. There is no right of appeal against such a Notice. The Notice will specify the steps that need to be taken to ensure full compliance with the condition that is being breached, together with any remedial work required, if appropriate. Although the recipient of such a Notice is given at least 28 days for compliance, in practice it would usually bring about the immediate cessation of works not complying with the relevant condition e.g. working outside the permitted hours. Failure to comply with the requirements of a breach of condition notice may result in prosecution.

### **6.4 Enforcement Notice**

Where it is expedient to do so **and** there is clear evidence of a breach of planning control, an Enforcement Notice may be used. This Notice is served on all interested parties where harm to the environment or the local amenity has been caused by a breach or breaches of planning control. Such a notice will specify the works to which it refers, what steps are required to be taken, or what activities are to cease, to remedy the breach and also the time period within which these steps need to be taken. An Enforcement Notice does not take effect for 28 days, and there is a right of appeal by the recipient of such a Notice. If

there is an appeal, then the requirements of the Notice are suspended unless and until the Notice is confirmed by the Secretary of State. Once the Notice takes effect, then the requirements of that Notice must be met. Failure to meet these requirements constitutes a criminal offence and the Council may decide to prosecute in certain cases.

#### 6.5 **Stop Notice**

Stop Notices may only be served accompanying or following the issue of an Enforcement Notice. Stop Notices normally take effect after three days and are used where there is significant or irreversible harm taking place through an unauthorised activity that needs to be controlled within a short timescale.

#### 6.6 **Temporary Stop Notice**

These notices may be served where the Council considers that a breach of planning control is so serious that the activity amounting to the breach should stop immediately **and** it is expedient to do so. No enforcement notice needs to be issued with this type of notice. The maximum length of time that such a notice will have effect for is 28 days. During this time the Council must decide whether it is appropriate to take further enforcement action. At the end of 28 days there is the risk of the activity resuming if an enforcement/stop notice is not served.

#### 6.7 **Injunction Notice**

Where there is a threat of irremediable damage the Council may also apply to the High Court or County Court for an Injunction to stop unauthorised works taking place. Such an application can be made even if the Council has not used other enforcement powers. This type of action is normally only taken in exceptional cases, particularly where determined and persistent flouting of planning control is taking place.

### 7.0 **Procedure Following Service of an Enforcement/Stop Notice/Injunction**

The length of time for compliance with notices is case specific and depends on a number of factors. Any appeal lodged against an Enforcement Notice may delay the enforcement process unless a Stop Notice has also been issued.

#### 7.1 **Compliance with Notice(s)**

Following the service of a formal Notice the Council will visit the site on a frequent basis to monitor compliance with the requirements thereof. Landowners/operators and other interested parties are advised of the possible consequences should the rate of progress be slow or inadequate to meet the requirements of the served Notice. Once the Notice has been complied with then the Council will resume its normal monitoring procedures for that site. If the Notice is not complied with, then the Council will consider a prosecution, if it is in the public interest.

## 7.2 **Injunction**

Where an injunction has been granted, breach of it is a contempt of court and the Council may apply to the court for committal of the person in breach of the injunction. This may lead lead to fines or imprisonment.

## 7.3 **Prosecution**

Where the requirements of a particular Notice are not met, then the Council may decide to prosecute for non-compliance. The Council's main aim in all its enforcement activities is not to penalise or punish those responsible, but to prevent further harm to the environment and the local amenity, and also to act as a deterrent to other potential offenders. Prosecution is a very serious step, expensive and time-consuming and will only be initiated after full consideration of all relevant facts, including:-

- The harm caused by the offence
- The intent and personal circumstances of the offender
- The history of the offender
- The deterrent effect of a prosecution
- The likely chance of securing a conviction – availability of reliable evidence/3<sup>rd</sup> party witnesses etc.
- The benefit to the local community

## 7.4 **Direct Action**

Exceptionally, the Council may decide to enter land and carry out remedial measures or emergency works to ameliorate the effects of a significant breach of planning control. Prior to this a full cost/benefit analysis will be undertaken. The Council will seek to recover the costs involved in such direct works from the relevant persons in these cases.

## 8.0 **Council's Commitment to Complainants**

The Council's response to those persons reporting alleged breaches of planning control is set out below:-

- All reported alleged breaches of planning control that fall within our jurisdiction will be accurately recorded on receipt and given a unique investigation number
- Complaints about matters outside our area of jurisdiction will be passed on to the relevant authority and the complainant will be informed of this process
- If requested, the confidentiality of those reporting incidents will be maintained at all times
- Investigations into reported incidents will normally start within 24 hours of that complaint being received. In most cases, this will involve an initial site visit to assess the situation
- Within 5 working days of the complaint being received, the Council, if requested to do so, will write to those who reported the alleged breaches to formally acknowledge receipt of the complaint
- Within 15 working days of the investigation being closed, the Council will write to, if requested to do so, those reporting incidents detailing the outcome.
- Should an investigation be complex and/or lengthy then the Council will provide regular feedback to the complainant(s), if requested to do so
- Where no formal action is taken the Council will provide an explanation of the reason(s), if so requested.

Please note, if there is the possibility of Court proceedings resulting from any investigations, detailed feedback may not always be possible to ensure that any subsequent legal action is not compromised.

## **9.0 Summary**

- 9.1 Worcestershire County Council is fully committed to protecting and enhancing the environment of Worcestershire and the local amenities through the effective discharge of its planning enforcement duties. All alleged breaches of planning control will be recorded and appropriately investigated. The Council will be accountable for all decisions, actions and service delivery relating to planning enforcement.
- 9.2 In the majority of cases, negotiation and persuasion will be enough to remedy most breaches of planning control but the Council will not hesitate to use appropriate formal enforcement powers should the need arise. These powers will be used in a manner proportional to the amount of harm caused by a breach.
- 9.3 This policy is intended to provide a general framework for the Council to control unauthorised development effectively, to target its resources

efficiently and to ensure that the residents of Worcestershire are not subjected to unreasonable harm as a result of breaches in planning control. This policy will be reviewed on a regular basis.

#### **Footnotes**

1. Government policy on planning enforcement is provided by Planning Policy Guidance Note 18 (issued December 1991), Department of the Environment Circular10/97 (issued July 1997) and Good Practice Guide for Local Planning Authorities (DETR 1997).
2. "Best Value" is a national Government initiative, part of the process of 'Modernising Local Government', introduced in 1999. From April of 2000 the Government introduced a duty on local authorities to secure Best Value through a continuous improvement of services provided by local authorities.
3. The Enforcement Concordat is a voluntary Government initiative with the aim of improving and developing the countrywide enforcement function. Copies of the document can be provided on request